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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,929	11/21/2003	John M. Forsythe	1957-6012.1US	4005
24247	7590	03/27/2009	EXAMINER	
TRASKBRITT, P.C. P.O. BOX 2550 SALT LAKE CITY, UT 84110			HYUN, PAUL SANG HWA	
			ART UNIT	PAPER NUMBER
			1797	
			NOTIFICATION DATE	DELIVERY MODE
			03/27/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/719,929	<b>Applicant(s)</b> FORSYTHE ET AL.	
	<b>Examiner</b> PAUL S. HYUN	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-13 and 15-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-13 and 15-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/11/08,02/19,09</u> .                                       | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The amendment filed by Applicant on December 29, 2008 has been acknowledged. Claims 1, 3-13 and 15-21 remain pending. Applicant amended claims 1 and 7.

The IDS filed by Applicant on September 11, 2008 and February 19, 2009 have been acknowledged.

Despite the amendment and Applicant's arguments, the rejections are maintained.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims **1, 3-13 and 15-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Peck (US 5,358,851) in view of Anton et al. (US 2001/0053517 A1) and Guyot (US 5,907,925).

Peck discloses a method for quantitatively analyzing toxic chemicals [e.g. 2-methylnaphthalene (see line 36, col. 2)] in soil (see lines 1-17, col. 6). The method comprises the steps of:

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a) providing a kit comprising a container, an adsorbent (e.g. charcoal), buffers and standards (see lines 5-10, col. 6 and lines 58-61, col. 5);

b) using the adsorbent to collect a sample (e.g. soil) (see lines 5-10, col. 6);

c) extracting hydrocarbons from the adsorbed sample by using an extraction solution;

d) transporting the container to a gas chromatograph; and

e) quantitatively measuring the amount of extracted hydrocarbons (see Example 4, col. 11).

The method disclosed by Peck differs from the claimed invention in that Peck does not disclose the use of an internal standard. Peck also does not disclose collecting crop samples at a crop storage facility.

With respect to the internal standard, Anton et al. disclose a kit for collecting and analyzing an unknown sample. The kit comprises a known quantity of internal standard that is used to “spike” the sample. The internal standard is used to determine the natural degradation of the sample from the time the sample is collected and the sample is analyzed (see [0007]). This is accomplished by obtaining the ratio of the quantity of the internal standard at the time of sample analysis and the known initial quantity of internal standard used to spike the sample (see [0022]). In light of the disclosure of Anton et al., it would have been obvious to one of ordinary skill in the art to provide the kit disclosed by Peck with an internal standard to account for the natural degradation of the sample.

With respect to the samples at a crop storage facility (i.e. tuber sample), Guyot discloses that crops take up chemicals present in the soil (see lines 59-65, col. 3). In

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light of the disclosure of Guyot, and given that the method in Peck is directed towards the analysis of contaminants present in samples that are consumed by humans [i.e. soil, water and air (see lines 5-15, col. 6)], it would have been obvious to one of ordinary skill in the art to collect tuber samples from a crop storage location and apply the test disclosed by Peck to determine the concentration of deleterious chemicals (e.g. sprout inhibitors, pesticides) in the tuber samples. Likewise, it would have been obvious to rinse the tuber sample prior to analysis to remove dirt and other analytes of non-interest, and it would have been obvious to analyze only a section of the tuber to minimize the time and ingredients used for the analysis.

With respect to claim 6, Peck discloses conducting a regression analysis of the data produced by the gas chromatograph (see Example 4, col. 11). Based on the disclosure, it is evident that information about the sample analyzed via gas chromatography is recorded. Otherwise, a regression analysis could not be conducted.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been fully considered but they are not persuasive.

Applicant argues that the claimed invention is patentably distinct from the cited references because none of the references disclose analyzing crop/tuber samples. This argument is not persuasive. As indicated in the rejection, Peck discloses a method for analyzing toxic chemicals in soil, water and air. Although Peck does not explicitly disclose that the sample is crops/tubers, based on the disclosure, it would have been obvious to one of ordinary skill in the art to analyze other human-consumed samples

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that can become contaminated by toxic chemicals. It is well known in the art that crops such as tubers are susceptible to contamination because they are treated with various chemicals (e.g. pesticides and sprout inhibitors). Thus, Applicant's argument that the claimed invention is patentably distinct because none of the cited references disclose analyzing crop samples is not persuasive.

Applicant also argues that the disclosure of Anton et al. regarding the use of an internal standard to determine the natural degradation of a sample from the time of collection to the time of analysis is not applicable because the disclosure of Anton et al. is limited to nucleic acid analysis. This argument is not persuasive because one of ordinary skill in the art would recognize that the concept of using an internal standard as disclosed by Anton et al. can be used to determine the natural degradation of any sample that undergoes natural degradation. Anton et al. do not disclose or suggest that the use of an internal standard is unique to nucleic acid analysis.

Applicant also argues that the claimed invention is patentably distinct from the cited references because none of the references disclose the step of transporting the sample from a crop storage location to a chemical testing facility. This argument is not persuasive. Peck discloses the step of conducting an analysis using a gas chromatograph at a testing facility (see Example 11, col. 11). Thus, Peck discloses the step of transporting the sample from the source to a testing facility. Although Peck does not explicitly disclose that the source is a crop storage location, it would have been obvious to collect samples from a crop storage facility if one were to analyze crop/tuber samples.

Lastly, Applicant argues that there is no motivation to combine the teachings of the cited references. Specifically, Applicant argues that the three references are directed toward unrelated subject matter. This argument is not persuasive. It should be noted that the disclosure of Anton et al. and Guyot relied upon in the rejection are limited to the passages cited in the rejection. In this instance, Anton et al. was relied upon for its teaching of using an internal standard to determine the natural degradation of a sample from the time of sample collection to the time of sample analysis, and Guyot was relied upon for its disclosure that crops take up chemicals present in soil. The Examiner maintains the position that the disclosure of Anton et al. and Guyot relied upon in the rejection are relevant to the disclosure of Peck because the disclosure of Peck is directed towards collecting soil samples contaminated with chemicals at one locale and transporting the sample to a testing facility to be analyzed. Thus, Applicant's argument that there is no motivation to combine the teachings of the cited references is not persuasive.

For the foregoing reasons, the rejection is maintained.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL S. HYUN whose telephone number is (571)272-8559. The examiner can normally be reached on Monday-Friday 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul S Hyun/  
Examiner, Art Unit 1797

/Jill Warden/  
Supervisory Patent Examiner, Art Unit 1797



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